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# The State of South Carolina



## Office of the Attorney General

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June 4, 1986

Jim Miller, Administrative Assistant  
North Spartanburg Fire Department  
Route 13 - Box 773  
Spartanburg, South Carolina 29303

Dear Mr. Miller:

By your letter of April 28, 1986, you had asked whether a state employee may also serve on the board of the North Spartanburg Area Fire and Rescue Department.

The individual in question is a regional training coordinator for the South Carolina Fire Academy which is, for budgetary purposes, now within the State Fire Marshal's office. His duties include setting up training in the upstate area through the Fire Academy, overseeing field instructors in the upstate, and other activities of the Fire Academy as may be necessary. At this time he has not been appointed to the Department's board, but he may be under consideration for appointment in the near future.

Article XVII, § 1A of the South Carolina Constitution provides that "... no person shall hold two offices of honor or profit at the same time." For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980). Although we have not seen the position questionnaire for the specific position held by this individual, it appears

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from the information provided to us that the individual would be an employee rather than an officer as a training coordinator for the Fire Academy.

One who would serve on the board of the Department would most probably be an officer. Section 2 of Act No. 172, 1969 Acts and Joint Resolutions, provides for appointment of the board of fire and rescue control members by the Governor upon the recommendation of a majority of the Spartanburg County Legislative Delegation. Terms of six years are specified. Members are to serve without pay. There are also provisions for changing the method of appointment to election. Powers and duties are specified in Section 3 of Act No. 172 and include various functions usually thought of as exercising sovereign power, such as making rules and regulations, borrowing money, making notes evidencing indebtedness, and so forth. These factors considered all together would be sufficient for a court faced with the issue to conclude that board members are officers for purposes of dual office holding.

From the information provided to us, it appears that no dual office holding would occur, since one position would be employment while the other would be an office.

One other area of concern would be the regulations of the individual's employer as to service on boards or governing bodies of political subdivisions. The dual office holding question aside, there are no state laws generally prohibiting a state employee from serving on such a governing body. Some state agencies do have their own regulations about activities in which their employees may engage outside their work (such as not running for office in a partisan election). It would be very wise to clear the appointment or election of this individual with his employer to avoid surprises or disappointments at a later date.

To summarize the foregoing, no state law would prohibit the individual, as a state employee, from serving on the board. The individual's employer may have a policy or regulation which might prohibit his serving on the board. Because we have been unable to obtain his position questionnaire, we are relying upon information given to us about his duties; the position questionnaire may contain duties which would involve an exercise of sovereign power, of which we are presently unaware. Finally, the individual may be involved in other activities which may be considered office-holding, or he may hold a constable's commission. These factors must also be considered in giving you an absolutely clear response; thus, a cautious approach must be

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taken in responding to your question. Based on the information presented to this Office, however, no dual office holding would appear to occur if the individual occupied both positions concurrently.

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:

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